

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
September 12, 2013

Meeting called to order at 6:06 p.m.

Board Members Present: Tom Emerson, Deborah Driscoll, Mark Alesse, Ann Grinnell, Susan Tuveson, Bob Melanson

Members absent: Rich Balano

Staff: Gerry Mylroie, Planner; Chris DiMatteo, Assistant Planner

Pledge of Allegiance

Minutes:

August 22, 2013

Ms. Grinnell moved to accept as submitted

Mr. Melanson seconded

Motion carried unanimously by all members present

August 29, 2013

Ms. Grinnell moved to accept as submitted

Ms. Tuveson seconded

Discussion followed regarding wording

Motion carried; 5 in favor; 0 against; 1 abstention (Tuveson)

Public Comment: There was no public comment

PUBLIC HEARING/OLD BUSINESS

ITEM 1 – 68 Chauncey Creek Road Replacement Structure – Shoreland Development Plan Review.

Action: Continue Public Hearing, review revised plan and grant or deny plan approval. John Rummler, owner and applicant, requests approval to replace and expand an existing structure at the property located at 68 Chauncey Creek Road, Tax Map 45, Lot 72, Residential – Kittery Point Village Zone and Shoreland Overlay Zone. Agent Ken Markley, Easterly Survey, Inc.

Mr. Rummler noted the revised plans reflect the agreement to remove the tree and relocate the house and garage approximately 20 feet further away from the Creek. He met with the CEO and received a letter from Mike Cuomo confirming that the septic system will be confirmed to be satisfactory and will be inspected following hook-up. Lot coverage and building square footage and volume are below the allowable percentage increase. He noted the proposed structure will be 70 feet from the creek, while four other homes in the area average 46 feet. The proposed structure is more compliant than the previous structure. The DPW reviewed and approved the proposed driveway location.

The Public Hearing continued at 6:25 p.m.

Lee Roberts, Portsmouth, NH explained her daughter owns the house at 66 Chauncey Creek. The four properties referenced with less setbacks from the creek were built before the Shoreland setback requirements. She spoke about driveway ordinances and other disagreements with Mr. Rummler (former son-in-law), including trees and debris on the site. She read a letter to her from Mr. Rummler. Mr. Emerson stated these issues are between her and Mr. Rummler and she should confine her testimony to the application before the Board. She stated the structure should be 100 feet back from the creek.

Mr. DiMatteo provided a letter to the Board prepared by Martha Kowal, who presented the letter at the prior meeting.

Earldean Wells, Conservation Commission, read 16.7.3.5.6.B *In no case will a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it may not be any larger than the original structure, except as allowed pursuant to Section 16.7.3.5.5, Nonconforming Structures Repair and/or Expansion, as determined by the nonconforming floor area and volume of the reconstructed or replaced structure at its new location and 16.7.3.5.6.C If the total amount of floor area and volume of the original structure can be reconstructed beyond the required setback area, no portion of the reconstructed structure may be reconstructed at less than the setback requirement for a new structure.* This is a new structure and there is room outside of the setback to place a house.

There was no further testimony.

The Public Hearing closed at 6:37 p.m.

Ms. Grinnell moved to approve the 68 Chauncey Creek Road Shoreland development plan.

Ms. Tuveson seconded

Mr. Emerson asked why the structure could not be located outside of the 100-foot setback. Ms. Driscoll suggested of all setbacks on the plan, the most important is the shoreland setback; she asked about the deck setback and garage/breezeway location; the abutter's septic system and overboard discharge and drainage between 66 and 69 Chauncey Creek Road.

Ms. Grinnell asked about Title 16.7.3.5.6.B. Mr. Melanson noted the Town required the prior structure be demolished, so there must be some latitude from the Board for replacement with new structure. He recommends the structure be placed outside of the 100-foot setback. If the new structure was placed on the prior footprint, that would be a different matter. Mr. DiMatteo suggested the Board reference Title 16.7.3.6 which is specific to the Shoreland Zone, which also reference locating at the greatest practical extent. He explained this is not new construction on a vacant lot, but a replacement structure, and is allowed by code: *16.7.3.5.6.D. Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and removed, damaged or destroyed by any cause through no fault of action by the owner by 50% or less of the market value of the structure before such damage, destruction or removal, may be reconstructed in-place if a permit is obtained from the Code Enforcement Officer or the Planning Board (in cases where the structure was located in the Shoreland Overlay or Resources Protection Overlay Zone) within twelve (18) months of the established date of damage or destruction.*

Mr. Rummler stated it was his understanding from the Board and staff that he could re-apply for reconstruction of the buildings that were removed. He was told to place the structures to be compliant with the side and front setbacks. Given the size of the property, a 2-car garage fills up 80% of the lot, and there is no way anyone can build 100 feet back without relief from the Board. The house is sited because of the grade and the structure will be low, allowing for living area below. The breezeway is proposed to be flush with the grade and impervious materials can be used; the driveway will utilize impervious pavers; the patio footprint will be flush with the grade and is less than the 240 sf concrete patio with a full foundation that previously existed. The structure is further back than the previous structure, complies with side and front setbacks, and provides better site lines than what existed previously.

Mr. Emerson asked about the 40-foot CEO required setback. Mr. Rummler stated the CEO required a 40-foot setback from the existing private right-of-way. Ms. Driscoll stated the Board needs to see volume calculations and how they are arrived at. Mr. DiMatteo explained the 30% expansion applies to the total of all floor areas. Mr. Rummler stated the surveyor and CEO reviewed the calculations of the prior structure before demolition, and confirmed the calculations for the proposed structure. Mr. Alesse asked if the patio is impervious. Mr. Rummler stated it is shown as large granite pavers, flush with the lawn, and is 20-feet further than the prior structure. Mr. Alesse stated it appears that while this proposal is not fully conforming, is less non-conforming, believes it to be a significant improvement, and should be allowed.

Ms. Driscoll stated the impervious surface area needs to be accurately measured and shown on what the Board approves. Ms. Grinnell asked why the structure is not proposed to be built 100 feet from the shore.

Mr. Emerson explained because code allows that upon removal of the house he is allowed to reconstruct as

if it were an existing non-conforming structure. Mr. DiMatteo explained the Board needs to consider the application and determine whether there is any way to move the structure further back...what is reasonable? Mr. Emerson also wondered why the structure could not be moved back 100 feet. Mr. Rummler offered to install dry-wells to handle run-off. If the structure is moved outside of the 100-foot setback, it would have to be significantly larger in volume and height in order to fit on the small buildable area of the lot. This is a modest house that fits in with the neighborhood, and the project has received a lot of scrutiny, as it should. Mr. Emerson stated the grade change appears to be only 2½ feet, not 10 feet, so a walkout isn't possible. Removal of the covered breeze-way would allow the house to be moved back a further 12 feet. Mr. Rummler stated if retaining walls are proposed, they are bound by the volume and square footage calculations. Ms. Grinnell asked if he is proposing retaining walls with the plan before them. Mr. Rummler stated if the proposed deck is approved, a retaining wall will be needed under the deck. However, the proposed sundeck is not located outside of the previous structure setback from the creek, and any retaining walls will not be located any further than the previous setback of 54.8 feet. Mr. Emerson stated the Board must see retaining walls on the plan prior to approval. Ms. Driscoll asked that the area of the breezeway within the 100-foot setback be included in all calculations. Did the previous house have a livable basement? What is the height of the structure? Mr. Rummler stated the volume calculations of the original basement were not included, however, all livable volume calculations have been included for the proposed structure. Mr. Emerson stated the Board could approve this as if it were a preliminary plan, but ask for further information prior to final approval, specifically a more detailed analysis of the volume and area calculations (including the breezeway) and illustration of the retaining walls. Mr. Melanson noted the table shows the driveway and breezeway outside of the structure calculations. Mr. DiMatteo asked if the breezeway calculations were included in the area and volume calculations provided on the plan. Ken Markley, Easterly Surveying, explained the proposed volume represents the allowed 30% increase. Mr. Emerson stated before approval can be granted they will need the information previously discussed. Mr. Emerson asked who the right-of-way serves? Mr. Rummler stated 68 and 72 Chauncey Creek, and after this it will be only one. Discussion followed regarding the adjacent septic system easement.

Ms. Grinnell withdrew her motion

Mr. Melanson moved to accept the preliminary plan for 68 Chauncey Creek, with the conditions that all structures and all volume and area calculations be identified on the plan.

Ms. Driscoll seconded

Ms. Grinnell asked if they will be required to move the structure outside of the 100 foot setback. Mr. Emerson stated they cannot compel them to do so, but can request it. Discussion followed volumes and areas and what areas should be identified, including the basement and breezeway.

Motion carried unanimously by all members present.

Break

ITEM 2 – Pearson Meadow Cluster Subdivision off Wilson Road – Subdivision Preliminary Plan Application.

Action: Hold Public Hearing and review preliminary plan. Owner Gail Beverly Burns and applicant Chinburg Builders, Inc, is requesting consideration of their plan for a cluster subdivision, ten new lots and one reserved lot on a 24.5 acre parcel at 60 Wilson Road., Tax Map 54, Lot 14, Residential-Rural and Resource Protection Overlay zones. Agent is Jeff Clifford, Altus Engineering, Inc.

Mr. Clifford introduced Eric Chinburg, Gail Burns and Durward Parkinson. He summarized the project proposal. Based on soils and removing wetlands and roads, 13.5 acres of net developable acreage remains, allowing for 14 lots/units. The proposal is for 10 new lots, with the owner's parcel identified as lot 11. Open space totals 12.53 acres and connects to conservation land at Devon Woods. The proposed road, Pearson Place, is 1,140 feet to the radius, with a maximum length allowed of 1,200 feet. While Wilson Road has been designated as a scenic road, the proposed lots are well off the entrance to the project, similar to the Devon Woods development, which has 12 residential lots, also built by Chinburg Builders.

The roadway has been located to avoid vernal pool impact. The Maine DEP determined the vernal pool was insignificant; however the ACOE also has jurisdiction over vernal pools adjacent to wetlands and requires a 100-foot buffer around a vernal pool. The proposed road is outside of the vernal pool. Moving the road to the owner's existing road would impact the migration of wood frogs to the forested wetland area on the adjacent property. The planned wetland impact of 4,200 sf has been approved by the Maine DEP and ACOE. The culvert will be three feet wide with a natural bottom to allow for passage by small animals. Site distances are over 600 feet site [to the west] and approximately 365 feet [to the east], with the removal of some alders along the roadside, which meets the requirement of a minimum site distance of 350 feet. He described the rationale for the entrance location in reference to the Wilson Road characteristics. The design of the project road allows for a curb which allows for a visual disappearance of the road on the site. Instead of a separate walkway, they are proposing a wider shoulder. The DPW and Fire Chief have indicated no issues with the proposed project, and a traffic study has not been required. Individual septic and wells are proposed, and each lot has been proved for these utilities. The owner's gravel driveway leads to the historic barn, adding to the scenic character of the area, and the owner's would like to retain this road as is. The cluster ordinance requires that no lot have direct access to an existing road, and they are requesting a waiver of this requirement as the lot is existing and the ordinance requirement is new. Allowing the applicant to continue use of this driveway would have no impact on the public, and the scenic road section of the comprehensive plan speaks to working with private homeowners. This property is unique because of the historic structure and should create no precedent o future projects. They are proposing a 40-foot no cut buffer along the front of the property. A screening of conifers or fencing is proposed along the project road to prevent headlight spillage onto the Kings Court properties. They are also proposing a 20-foot no cut buffer along the rear of the property. He discussed buffers and drainage, noting drainage will flow over natural areas to the wetland and culvert, as it does now. The drainage plan will be reviewed by the DEP prior to final approval. He briefly summarized the modification requests. As to how this project meets the purpose of cluster development:

- A. efficient use of the land and water, with small networks of utilities and streets:
 - the road length is minimized and designed to buffer the scenic roadway.
- B. preservation of open space and creation of recreation areas;
 - 12.53 acres of common open space proposed; maximum lots allowed are 14, proposal is 11 lots; open space is configured to maximize buffers natural resources; walking trails are provided.
- C. maintenance of rural character, preserving farmland, forests and rural viewscapes;
 - design of road minimizes view from Wilson Road; homes are 900 feet back; similar to adjacent properties (Devon Woods & Seward Farm).
- D. preservation of areas with the highest ecological value;
 - buffers around vernal pool; Inland Fish & Wildlife confirmed there was no indication of New England Cottontail habitat in the forested wetland area.
- E. location of buildings and structures on those portions of the site most appropriate for development;
 - location is to the rear of the property, not visible from Wilson Road.
- F. creation of a network of contiguous open spaces or 'greenways' by linking the common open spaces within the site and to open space on adjoining lands wherever possible;
 - the 10-foot open space connecting the larger open spaces will be combined with a 10-foot no-cut buffer, as part of the deed.
- G. reduction of impacts on water resources by minimizing land disturbance and the creation of impervious surfaces and stormwater runoff;
- H. preservation of historic, archaeological, and cultural features; and
 - Maine Historic Preservation had no concerns about the proposed project; a 40-foot front property buffer proposed to retain the scenic views; historic barn preserved.
- I. minimization of residential development impact on the municipality, neighboring properties, and the natural environment.
 - Screening proposed along King's Court, along the front property line and rear of the property.

The Public Hearing opened at 8:32 p.m.

Gary Seward, Picot Road, asked if there was any consideration of the water table and impact on adjacent properties. He noted the views from Seward Farm Lane are not as pretty as from Wilson Road.

William Upton, 56 Wilson Road, noted there are locust and acorn trees on his property that would have to be removed to exit the road as it is hard to see.

Ralph Tedesco, 67 Wilson Road, stated most of his questions have been answered, but is concerned about the runoff from the roadway drainage and wants to be sure there is no impact on his property across the street. He explained the Devon Woods drainage crosses Wilson Road onto his property now.

Susan McNeil, 2 Kings Court, is concerned about the proximity of the proposed road and impact of headlights onto her home. She said her home is only 27 feet from the property line. There are two ponds on her lot, one of which is designated for fire protection, and asked if this project would also use the pond. She asked about the two road cuts into Wilson Road, a scenic roadway. She noted her concern about her well and wetlands and the impact on these by the proposed roadway. Perhaps lots 1, 2 and 3 could be relocated closer to Wilson Road. The pond area is dammed preventing runoff. She noted her concern about large tree removal. She is upset there is a road proposed directly behind her.

Earldean Wells, Conservation Commission, noted the wetland area has been impacted in a number of places, and now by the proposed road culvert. She does not believe the 3'x5' culvert is sufficient to allow water to pass back and forth or for wildlife passage.

Gail Burns, owner, illustrated the flow of the water. She stated the pond area was created by bulldozing over 30 years ago. She explained prior to the cut of the hill, water drained to the brook over the fields. She discussed the large trees on her property and their maintenance, including one that had been hit by lightening and needs to be removed, and other red oaks that have been infected by a bug. She spoke about the history of the property and how the name Kittery came to be via the Shapleigh family, who lived on the property. The barn was built by Dr. Shapleigh. The existing driveway has been in the same location for over 100 years and will not be paved. Much of what is called wetlands today was farmland years ago. She is concerned that the project is done properly.

Susan McNeil stated she moved to Kittery from Massachusetts for its beauty. Perhaps Ms. Burns could deed the property to the Town for a historical park.

The Public Hearing closed at 9:01 p.m.

Mr. Mylroie stated the net residential area calculations are impacted by the ordinance's use of the out of date soil suitability guide and will be addressed. He summarized the agent's presentation regarding the road location, connection of open space and wildlife movement, and pedestrian access to Wilson Road. Mr. Emerson stated the road it is counterintuitive to cluster design. Buffering is needed because of the proximity of the adjacent developments and view from Picot Road. A clear design for pedestrian walkways and bicyclists is needed. Ms. Grinnell asked about the individual septic systems. Mr. Clifford explained when the ordinance was designed the Board agreed, following extensive discussion, to provide the mechanism for allowance of individual septic systems. Individually owned systems will be better used and maintained than a community system. Only 30-40% of the water available on-site would be used by the project. Mr. Alesse stated testimony has been given that community systems can be used and is a viable alternative. The density issue has to be addressed, including the rural residential density amendments to the code, previously discussed. Ms. Driscoll asked about the creation of recreational areas that do not appear on the plan, such as picnic or soccer areas. Mr. Emerson mentioned a development in another state that had 14 units on one acre that also had a community eating and gardening area. Ms. Driscoll stated she is fine with this development proposal.

Ms. Driscoll moved to approve the preliminary plan of the Pearson Meadows cluster development and invite the applicant to submit a final plan application for review

Mr. Melanson seconded

Ms. Driscoll asked the rear buffer be increased to 20 feet; proposed fencing and sufficient conifers be included along the Kings Court properties; consider inclusion of vernal pool area in conservation. She noted the vernal pool study was done in 2012 and asked if there had been any changes. Mr. Clifford noted the pool was man-made, but the ACOE has different review criteria.

Ms. Grinnell stated she still has issues about the septic systems and the road.

Mr. Alesse stated he is still hung-up on soil suitability and septic requirements.

Mr. Melanson stated this issue will be discussed further, that there are multiple agenda items still to be reviewed, and the Board needs to move on.

Motion carried with 4 in favor; 2 opposed (Alesse, Grinnell); 0 abstentions

The Board concurred that Item 5 will be moved to the next scheduled Board meeting of September 26.

ITEM 3 – 4 Knight Ave Shoreland Development Plan Review 11:15

Action: Hold Public Hearing and review plan, grant or deny plan approval. Owner and applicant Knights of Kittery LLC, requests approval to replace and expand an existing structure located above an existing pier on the property located at 4 Knight Avenue, Tax Map 4, Lot 67, Mixed Use- Kittery Foreside Zone and Shoreland and Commercial Fisheries Overlay Zones. Agent Ken Markley, Easterly Survey, Inc Ken Markley, Easterly Survey, summarized the project, noting there are currently 6 spaces on the property and this has not been changed. The plan was revised to include a small, 3-foot addition to the rear of the structure to maintain the existing side setback area.

Mr. Melanson noted he attended a site walk with the marine contractor and the Port Authority has issued a permit for pier replacement in-kind. Ms. Driscoll noted her concern that the building had been used as a residence and is concerned that the building be used as allowed. Mr. Markley stated it will not be used as a residence, but for marine dependent activities. The upstairs area could be used as office area for fishermen.

The Public Hearing opened at 9:40 p.m.

Richie White, 14 Knight Ave. owner, noted his support of the project as the existing pier and building is in disrepair. He is concerned with the parking and the future use may impact parking and traffic in the area as cars must back onto their property to exit Knight Ave. He was told by the owner that their intent is to sell the dock and structure separately and, depending upon the use, traffic could increase. Knight Ave. itself is in disrepair even though it is a town road, and has been hot topped by the residents in the past. It is unfair that new roads are accepted by the Town but existing roads are not maintained. Knight Ave. is not maintained or plowed by the Town, and he will need to hot-top it again. However, he is in support of the project and hopes it is approved.

Don Philbrook, 15 Government Street, looks down on this property. Many times people park in front of their garage so they cannot get in. There are only 6 spaces and wonder if this is enough parking. He requested no bait storage be allowed on the property. He concurred that the road needs to be repaired.

The Public Hearing closed at 9:48 p.m.

Mr. Markley suggested the residents should contact DPW or address council regarding the lack of road maintenance. Regarding the parking, he suggested the fishermen are in the area when the residents are not home and vice-versa. Bait storage was not discussed with the owner. Mr. Philbrook asked what kind of use will be allowed in the building. Mr. Emerson explained the use must be water dependent, such as an office for lobstermen or a repair area out of the weather. However, since bait is a water dependent use, this needs to be addressed further. Mr. Melanson stated this could also be a wholesale lobster business. Discussion followed regarding the existing parking area and whether the Board could approve their use as cars must back onto abutting property to exit.

Ms. Grinnell moved to continue the meeting until 10:30 p.m.
Ms. Tuveson seconded
Motion carried unanimously

Mr. Mylroie suggested when the application is received for a business use change it can be brought back to the Board. Mr. DiMatteo referenced a note on the plan that addresses an access easement for the subject property.

Mr. White clarified they would not like to see the parking spaces drawn on the plan. Mr. Emerson stated whoever purchases the property will need to return to the Board when they are ready to receive a change of use permit. Mr. Mylroie stated a condition to this effect needs to be included on the final plan which will be recorded.

[unknown] asked how use by a new owner would be controlled. Mr. Emerson explained the condition will be on the plan when they research the purchase. Discussion followed regarding whether to include conditions on the plan.

Mr. Melanson moved to accept the plan and read the Findings of Fact, with conditions that the parking spaces be removed from the plan and that a change in use of this property will return to the Planning Board prior to issuance of a business use permit.

Ms. Tuveson seconded
Motion carried unanimously by all members present

Ms. Tuveson read the Findings of Fact:

WHEREAS: Owner and applicant Knights of Kittery LLC, requests approval to replace and expand an existing structure located above an existing pier on property located at 4 Knight Avenue, Tax Map 4, Lot 67, Mixed Use- Kittery Foreside Zone and Shoreland and Commercial Fisheries Overlay Zones.

Hereinafter the “Development”.

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted; and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following (Hereinafter the “Plan”).

FINDINGS OF FACT

I. Standards in the Shoreland Overlay Zone

Chapter 16.3 LAND USE ZONE REGULATIONS have been met.

16.3.2.17. D Shoreland Overlay Zone - Standards.

1.d d. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones:

- i. Mixed Use -Badgers Island (MU-BI) and Mixed Use Kittery Foreside (MU-KF) Zones, where the maximum lot coverage is sixty (60) percent. The Board of Appeals may approve a miscellaneous appeal application to increase allowable lot coverage in the Mixed Use -Badgers Island (MU-BI) zone to seventy (70) percent where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent use.*

Finding/Conclusion: This standard is not applicable to this project

Vote: 6 in favor 0 against 0 abstaining

II. Standards in the Shoreland Overlay Zone

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS have been met

16.7.3.1 Prohibitions and Allowances. <i>A. Except as otherwise provided in this Article, a non-conforming condition must not be permitted to become more non-conforming.</i>
16.7.3.6.1 Nonconforming Structures in Shoreland and Resource Protection Zones. <i>B. If a replacement structure conforms to the requirements of Section 16.7.3.6.1.A and is less than the required setback from a water body, tributary stream or wetland, the replacement structure will not be permitted to expand if the original structure existing on January 1, 1989, has been expanded by 30% in floor area and volume since that date.</i>
Finding: Proposed expansion is within allowable limit and is within the limits of the existing structure. Conclusion: The proposed structure re-construction will not be more non-conforming than the existing structure.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining

III. Procedures for Administering Permits For Shoreland Development Review

16.10.10.2 D. An Application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated that the proposed use will:

<i>1. maintain safe and healthful conditions;</i>
Finding: The proposed development does not appear to have an adverse impact. Conclusion: This standard has been met
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
<i>2. not result in water pollution, erosion or sedimentation to surface waters;</i>
Finding: The proposed development does not appear to have an adverse impact. Conclusion: This standard has been met
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
<i>3. adequately provide for the disposal of all wastewater;</i>
Finding: Municipal water and sewer is provided to the property. Conclusion: This standard has been met
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
<i>4. not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</i>
Finding: The proposed development does not appear to have an adverse impact. Conclusion: This standard has been met
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
<i>5. conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;</i>
Finding: The proposed development does not appear to have an adverse impact. Conclusion: This standard has been met
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
<i>6. protect archaeological and historic resources;</i>
Finding: There have been no resources identified. Conclusion: This standard has been met

Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
7. <i>not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;</i>
Finding: The proposed development will continue to operate as a commercial fishing activity. Conclusion: This standard has been met.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
8. <i>avoid problems associated with floodplain development and use</i>
Finding: This development is located in the AE Flood Zone. The proposed pier's deck elevation will be constructed 1-foot above the flood elevation, placing the first floor of the structure above one foot of the flood elevation. Design and construction of the replacement structure will conform to ordinance requirements specific to floodplain management prior to the issuance of a building permit by the Code Enforcement Officer. Conclusion: This standard has been met.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
9. <i>is in conformance with the provisions of this Code; and</i>
Finding: The proposal is a permitted use in the Commercial Fisheries/Maritime Uses Zone and conforms to applicable standards in <i>Article XV. Piers, Wharves, Marinas and Other Uses Projecting into Water Bodies</i> in Chapter 8 of the Kittery Land Use and Development Code. Conclusion: This standard has been met.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
10. <i>recorded with the York County Registry of Deeds.</i>
Finding: The applicant plans to record the final plan at the York County Registry of Deeds. Conclusion: This standard has been met.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining

NOW THEREFORE the Kittery Town Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed development will have no significant detrimental impact, contingent upon the following condition(s):

Conditions of Approval:

1. The six parking spaces will be removed from the parking plan;
2. The applicant shall return to the Planning Board prior to the issuance of a business change of use permit.

Approved by the Kittery Planning Board on September 12, 2013

ITEM 4 – 92 Whipple Road – Shoreland Development Plan Review

Action: Hold Public Hearing and review plan, grant or deny plan approval. Owner and applicant Jeffrey & Deborah Kolod requests approval to replace and expand an existing structure and construct associated improvements on the property located at 92 Whipple Road, Tax Map10, Lot 19, Residential–urban Zone and Shoreland Overlay Zone. Agent Ken Markley, Easterly Survey, Inc.

Ken Markley, Easterly Surveying, noted the location of the proposed structure and the existing Whipple House is 68-70 feet; the distance to the tomb to the existing garage corner was 32 feet at the closest points of the garage and tomb. The state requires a 30-foot 'no excavation' and a 25-foot setback around tombs.

The proposed garage will be constructed an addition 2 feet further away from the tomb. Ms. Driscoll asked the location of the tomb be shown on the plan. The driveway permit from DPW has been received. Looking toward Kittery Point, the site distance from the existing driveway is 418 feet; from the proposed driveway, 471 feet. Looking toward the Navy Yard, the existing site distance is 207 feet; proposed is 225 feet. Moving the driveway west also separates side by side driveways, which is safer.

Brendan McNamara, Architect, noted the existing stone retaining wall parallel to the abutting property and stone boundary walls will be retained, and no front yard retaining walls will be included. A drainage plan and dry well design has also been included. The footprint of the house has not been changed; the house will be picked-up and additions are to the center and vertically. Impervious coverage has been reduced with the proposed driveway design, and the garage has been moved back from the river though a portion is still within the 100-foot setback. Proposed expansion is within the allowable 30% expansion limitations.

Mr. DiMatteo stated CMA stated the plan shows an improvement over the existing plan and the drainage should not be an issue. However, if the Board requests formal stormwater review, additional information will be needed. Mr. McNamara stated there is no grade change with the removal of the driveway, noting the highest point is at the stone wall, and a recent rainfall indicates water flows essentially as before.

Ms. Driscoll moved to continue the meeting until 10:45 p.m.

Ms. Grinnell seconded

Motion carried unanimously by all members present.

Ms. Driscoll asked if the new plan had been shared with the neighbors. Mr. McNamara did not know, though it was included in the package that was noticed.

The Public Hearing opened at 10:27 p.m.

Eugene Smith, 96 Whipple, explained his concern is still the drainage and snow melt and whether the drywell can handle the runoff. He asked that an engineer review the plan to be sure it works as proposed. He asked about impervious coverage at 22% where he was not allowed to construct a shed on his property because it would exceed the allowable 20%.

Earldean Wells, Conservation Commission, stated several Commission members attended the site walk. Their concerns include:

- location of the garage within the shoreland setback, referencing 16.7.3.6.1.C, locating the structure at the greatest practical extent;
- illustration of the tomb on the plans;
- concern that an apartment is proposed above the garage which would exceed the height limitations;
- 16.7.3.5.6.B. no increase in nonconformity;
- 16.7.3.5.6.C. *If the total amount of floor area and volume of the original structure can be reconstructed beyond the required setback area, no portion of the reconstructed structure may be reconstructed at less than the setback requirement for a new structure.*
- The plans show an existing shed and garden are in the shoreland zone and request they be identified on the plan, noting they will not be enlarged;
- all stone walls remain;
- are in favor of review of the stormwater system by CMA;
- the trees replaced not be less than 2 ½" in diameter and be indigenous, and the variety, size and location be shown on the plan;
- what are the proposed plantings shown on the property;
- concerned about the shoreland erosion caused by the former owner, and what steps will be taken to control and stop the erosion.

Susan Thompson, 96 Whipple Road, concurred with Ms. Wells and noted the property is higher than their abutters, sloping toward the Whipple House, and there is a large heirloom tree next to the proposed driveway entrance. Structures that are removed and reconstructed should be held to the 20% impervious coverage limit. There is room to move the garage, per ordinance, even if it blocks the view to the water. The Public Hearing closed at 10:38 p.m.

Mr. Markley stated the trenches are three feet deep and 1½ feet wide with perforated pipe, and are designed to hold a lot of water, leading to a 420 gallon dry well, and likes the idea of an overflow pipe. Grading will be toward the trenches, so if abutter basements flood it's coming in from their front yard.

Mr. McNamara stated the owners can expand the existing barn by 30%, and the proposal reduces the impervious coverage from an existing 33% to 22%, which improves the drainage situation, and the garage design is part of that package.

Mr. Emerson stated he felt CMA should review the drainage plan. Mr. Markley asked that CMA only review the drainage plans and not the entire ordinance. Mr. McNamara asked if a condition of approval be the approval of the drainage design by CMA. Ms. Driscoll stated she wanted to see the tomb on the plan.

Ms. Driscoll moved to extend the meeting to 11:00 p.m.

Mr. Melanson seconded

Motion carried unanimously by all members present

Discussion continued regarding confirming the tomb's location (confirmation by CMA);

Ms. Grinnell stated notes need to be included regarding the stone walls and shed/garden area.

Mr. Melanson moved to accept the plan for 92 Whipple Road and read the Findings of Fact.

Ms. Tuveson seconded

Motion carried unanimously by all members present.

Mr. Melanson read the Findings

WHEREAS: Owner and applicant Jeffrey & Deborah Kolod requests approval to replace and expand an existing structure and construct associated improvements on the property located at 92 Whipple Road, Tax Map10, Lot 19, Residential–Urban Zone and Shoreland Overlay Zone.

Hereinafter the “Development”.

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted; and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following (Hereinafter the “Plan”).

Site Plan by Easterly Surveying, Inc. 7/18/13; Rev. 8/28/13
CEO Decision/Tree Removal 8/8/13

FINDINGS OF FACT

I. Standards in the Shoreland Overlay Zone

Chapter 16.3 LAND USE ZONE REGULATIONS have been met.

16.3.2.17. D Shoreland Overlay Zone - Standards.

1.d d. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones:

Finding: Impervious coverage will be reduced based on the proposed plan application, including the re-

vegetation of an impervious driveway and construction of a new pervious concrete material driveway.
Conclusion: The proposed development will reduce the non-conforming impervious and devegetated areas and does not create a more non-conforming condition.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining

II. Standards in the Shoreland Overlay Zone

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS have been met

16.7.3.1 Prohibitions and Allowances.
<i>A. Except as otherwise provided in this Article, a non-conforming condition must not be permitted to become more non-conforming.</i>
Finding: This is a conforming lot with existing non-conforming structures. The proposed garage reconstruction reduces the existing non-conformities regarding side and shoreland setbacks, and reduces impervious coverage on the property.
Conclusion: This standard appears to be met.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
16.7.3.5.6 Nonconforming Structure Reconstruction.
Finding: The existing non-conforming garage structure is located 89.4 feet from normal high water, within the 100-foot shoreland setback, and 4.4 feet from the side property. The proposed garage structure will be located 92 feet from normal high water and 4.7 feet from the side property. The nonconformity has not been increased.
Conclusion: The proposed structure has been located to the greatest practical extent and reduces the nonconforming setback.
Vote: <u>5</u> in favor <u>0</u> against <u>1</u> abstaining (Driscoll)
16.7.3.6.1.
<i>B. If a replacement structure conforms to the requirements of Section 16.7.3.6.1.A and is less than the required setback from a water body, tributary stream or wetland, the replacement structure will not be permitted to expand if the original structure existing on January 1, 1989, has been expanded by 30% in floor area and volume since that date.</i>
<i>C. Whenever a new, enlarged or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the <u>setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 16.7.3.5.2.</u></i>
Finding: The existing garage (no apparent improvements after 1/1989) appears to be 455 sf within the 100-foot shoreland setback, and the proposed increase (525 sf) is less than the allowed 30% increase (590 sf).
Conclusion: The proposed structure has been located to the greatest practical extent and reduces the nonconforming setback.
Vote: <u>5</u> in favor <u>0</u> against <u>1</u> abstaining (Driscoll)

III. Procedures for Administering Permits For Shoreland Development Review

16.10.10.2 D. An Application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated that the proposed use will:

<i>1. maintain safe and healthful conditions;</i>
Finding: The proposed development does not appear to have an adverse impact. Located in the Rural-Urban Zone, the residential structure was built in 1901 and will remain a residential. The proposed improvements

appear to improve the existing conditions on the property regarding impervious coverage and runoff.
Conclusion: The proposed development appears to meet this standard.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
2. <i>not result in water pollution, erosion or sedimentation to surface waters;</i>
Finding: The Shoreland Zone requires a maximum 20% impervious coverage. The proposed development reduces the impervious coverage from 33.6% to 22.8%, which is less non-conforming. Applicant proposes to grade lawn and garden areas away from adjacent properties to a trench drain, and a strip drain around the pool and patio area will divert runoff to a trench drain and dry well. Abutters noted concern regarding removal of a stone wall along the easterly side of the property. Applicant will retain the stone wall (see Note 10). The existing impervious driveway will be relocated from the easterly to the westerly side of the property and will be rebuilt utilizing a pervious concrete product. Applicant will utilize MDEP Best Management Practices to insure adequate erosion control and slope management.
Conclusion: Based on the site improvements proposed, this standard appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>1</u> abstaining (Driscoll)
3. <i>adequately provide for the disposal of all wastewater;</i>
Finding: The property is serviced by municipal sewer and water services.
Conclusion: This standard appears to be met.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
4. <i>not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</i>
Finding: Proposed development is primarily outside of the Shoreland Overlay Zone area and the proposed garage location from normal high water has been increased from 89.4 to 92 feet, less non-conforming than the previous structure.
Conclusion: The proposed development does not appear to have an adverse impact on fish or wildlife habitat.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
5. <i>conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;</i>
Finding: Applicant has received CEO approval to remove diseased and damaged trees located on the property and within the Shoreland Zone. The attached review from the CEO states the removal does not violate percent of vegetation removal in the Shoreland Zone.
Conclusion: The proposed development does not appear to have an adverse impact
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
6. <i>protect archaeological and historic resources;</i>
Finding: The abutting property to the west is the Whipple House, listed on the National Register of Historic Places. There is a large tree on the property line that may be impacted by the proposed improvements; otherwise it does not appear the property would be adversely impacted.
Conclusion: The proposed development does not appear to have an adverse impact
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
7. <i>not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;</i>
Finding/Conclusion: This standard is not applicable to this project.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining

8. <i>avoid problems associated with floodplain development and use</i>
Finding/Conclusion: This standard is not applicable to this project.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
9. <i>is in conformance with the provisions of this Code; and</i>
Conclusion: This standard appears to be met.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
10. <i>recorded with the York County Registry of Deeds.</i>
Finding/Conclusion: The final plan is required to be recorded at the York County Registry of Deeds as approved and in conformance with Condition #2. The plan notes (#8) that calculations are provided by the architect, and architectural designs have been included on the Site Plan. The architect needs to be identified on the Site Plan (Condition #3). The Planning Board signature block must include the date of plan approval.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining

NOW THEREFORE the Kittery Town Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed development will have no significant detrimental impact, contingent upon the following condition(s):

Conditions of Approval (to be included on the Plan prior to signature and recording):

1. Maine DEP *Best Management Practices* note for all work associated with site development and construction to ensure adequate erosion control and slope stabilization.
2. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan (see Title 16.10.9.1.2).
3. Architect of Record to be identified on plan prior to signing and recording of approved plan.
4. All Notices to Applicant included herein.
5. CMA to approve drainage design;
6. Include tomb location and distances on plan. To be verified by CMA.

Vote: 5 in favor 0 against 1 abstaining (Driscoll)

Approved by the Kittery Planning Board on September 12, 2013

Notices to Applicant:

1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
2. Prior to issuance of a building permit and any earth moving or soil disturbance, one (1) mylar copy and two (2) paper copies of the signed and recorded Plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department.
3. Title 16.6.2 An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

OLD BUSINESS

ITEM 5 – Yankee Commons Mobile Home Park Expansion – Subdivision Preliminary Plan Review.

Action: Continue Review, grant or deny preliminary plan approval. Stephen A. Hynes, Trustee, owner, proposes to expand the adjacent Yankee Commons Mobile Home Park to create 79 sites on 50 acres. Property is located off Idlewood Lane/U.S. Route 1, Map 66 Lots 24, Mixed Use (MU) Zone. Agent is Tom Harmon, PE, Civil Consultants.
Continued to 9/26/13.

ITEM 6 – Board Member Items: A. Comments and Discussion.

ITEM 7 – Town Planner Items:

- A. Open Space Acquisition Bond Authorization.
- B. Sarah Long Bridge Plan for Kittery Approach - Public Meeting, Thursday, September 19, 2013 at 6 pm; Town Council Invited.
- C. Hearing on Quality Improvement Plan for Memorial Circle, Thursday, October 24 at 6pm.
- D. Other

NEW BUSINESS

ITEM 8 – Woodside Meadows Estate – Street Naming Application. Action: Review and approve or deny Application. HDV Enterprises, owner and applicant proposes the street name *Woodside Meadows Road* for the approved subdivision Woodside Meadows Estate, located off Woodside Meadows Road in the Town of York, Kittery Tax Map 67 Lots 22, Rural Residential (R-RL) Zone.

Mr. DiMatteo noted the Tax Assessor and the Public Works Director did not approve the proposed name; however the Fire Chief and Police Chief accepted the proposed name.

Ms. Driscoll noted, given the location of the development to Woodland Commons, she thought a distinct name should be provided so there is no confusion should there be an emergency. Ms. Tuveson noted this is an extension of the road “Woodside Meadows Road” in York. Mr. Mylroie stated that 911 emergency services have approved the proposed name. Mr. Melanson stated to provide for continuity, the name should be the same in Kittery.

Mr. Melanson moved to accept the street name application from HDV Enterprises

Ms. Tuveson seconded

Discussion followed regarding the location of the subdivision

Motion carried with 5 in favor; 1 against (Driscoll); 0 abstaining

The Kittery Planning Board meeting of September 12, 2013 adjourned by rule at

Submitted by Jan Fisk, Recorder, September 17, 2013